

Atty. Dkt. No. 071949-1307

Remarks

The present invention relates in part to assay devices comprising elements for the controlled flow, delivery, incubation, separation, washing and other steps of the assay process. The devices of the present invention can provide advantageous capture efficiencies and sensitivities for the assay of a plurality of target molecules.

Claims 74-84 and 92-100 are presently pending. A listing of all claims with appropriate status identifier is provided starting at page 2 of the present communication.

Applicant expressly reserves the right to pursue subject matter no longer claimed in the instant application in one or more applications that may claim priority hereto.

Applicant respectfully requests reconsideration of the claimed invention in view of the following remarks and terminal disclaimers provided herewith.

Telephone interview

Courtesies extended to Applicant's representative in the telephone interview conducted January 19, 2006, are gratefully acknowledged. The substance of that interview was that the remaining rejections of the instant application can be overcome by the filing of suitable terminal disclaimers provided herewith.

Double Patenting – U.S. Patent No. 6,767,510

The rejection of claims 74-84 and 92-100 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 and 25-37 of U.S. Patent No. 6,767,510 has been rendered moot by the provision herewith of a suitable terminal disclaimer of the present application of U.S. Patent No. 6,767,510. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the current rejection.

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Double Patenting – U.S. Patent No. 6,156,270

The rejection of claims 74-84 and 92-100 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. Patent No. 6,156,270 has been rendered moot by the provision herewith of a suitable terminal disclaimer of the present application of U.S. Patent No. 6,156,270. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the current rejection.

Double Patenting – U.S. Patent Application No. 09/982,629 (now U.S. 6,905,882)

The rejection of claims 74-84 and 92-100 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 74-93 of copending U.S. Application No. 09/982,629, is respectfully traversed. Applicant notes that U.S. Application No. 09/982,629 has now issued as U.S. Patent No. 6,905,882 with issue date June 14, 2005. Applicant therefore understands this rejection to be an obviousness-type double patenting rejection over U.S. 6,905,882, which has been rendered moot by the provision herewith of a suitable terminal disclaimer of the present application of U.S. Patent No. 6,905,882. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the current rejection.

Double Patenting – U.S. Patent Application No. 11/022,297

The provisional rejection of claims 74-84 and 92-100 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of copending U.S. Application No. 11/022,297 is respectfully traversed. No terminal disclaimer is procedurally required in a case where the provisional rejection involves two pending applications and where the rejection is the sole remaining issue in the case. See MPEP 804 (I)(B) (The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications.") Accordingly, withdrawal of the instant provisional rejection is appropriate.

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Double Patenting – U.S. Patent Application No. 10/792,258

The provisional rejection of claims 74-84 and 92-100 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending U.S. Application No. 10/792,258, is respectfully traversed. No terminal disclaimer is procedurally required in a case where the provisional rejection involves two pending applications and where the rejection is the sole remaining issue in the case. See MPEP 804 (I)(B) (The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications.") Accordingly, withdrawal of the instant provisional rejection is appropriate.

Allowable Subject Matter

Applicant gratefully acknowledges the Examiner's statement of reasons for the indication of allowable subject matter (Office Action, page 3, paragraph 2) and reads said statement to cover all pending claims (i.e., claims 74-84 and 92-100) of the present application.

Response to Arguments

Applicant gratefully acknowledges the indication by the Examiner that the arguments filed August 9, 2005, with respect to previous rejections of claims 74-84 and 92-100 under 35 U.S.C. §§ 102 and 103 have been found persuasive, and that said rejections have been withdrawn (Office Action, page 3, paragraph 3.)

Conclusion

Applicant respectfully submits that the pending claims are in condition for allowance. An early notice to that effect is earnestly solicited. Should any matters remain outstanding, the Examiner is encouraged to contact the undersigned at the address and telephone number listed below so that they may be resolved without the need for additional action and response thereto.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to

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Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

Date 01/23/2006By Barry Wilson

FOLEY & LARDNER LLP
Customer Number: 30542
Telephone: (858) 847-6722
Facsimile: (858) 792-6773

Richard J. Warburg (Reg. no. 32,327)
Attorney for Applicant
By Barry S. Wilson (Reg. No. 39,431)

Attachments:

- Terminal Disclaimer of US Patent No. 6,156,270
- Terminal Disclaimer of US Patent No. 6,767,510
- Terminal Disclaimer of US Patent No. 6,905,882